

IT 08-1

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.	07-IT-0000
OF THE STATE OF ILLINOIS,)	Tax ID No.	000-00-0000
v.)	Tax Year Ending	2002
JOHN & JANE DOE,)	John E. White,	
Taxpayers.)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared, *pro se*, on behalf of taxpayers; Rickey Walton, Special Assistant Attorney General, appeared on behalf of the Illinois Department of Revenue.

Synopsis:

This matter involves John and Jane Doe's (taxpayers or the Does) protest of a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to them to propose to assess tax deficiencies for calendar year 2002. The NOD proposed to assess tax, penalties, and interest for taxpayers' failure to file an Illinois individual income tax return regarding that year.

The hearing was held at the Department's offices in Chicago. John Doe appeared at that hearing and offered testimony. I have reviewed that evidence and I am including in this recommendation findings of fact and conclusions of law. I recommend the tax and penalties proposed be revised, then finalized as issued.

Findings of Fact:

1. On or about February 10, 2003, taxpayers signed an Illinois income tax form that they caused to have prepared regarding 2002. Department Ex. 2 (copy of taxpayers' 2002

signed form IL-1040). On that return, taxpayer stated that: \$2,226 had been withheld from their wages; they were entitled to an Illinois property tax credit in the amount of \$211; and that they had tax due in the amount of \$395. *Id.* (p. 2 of IL-1040 (lines 17, 20)). There was no evidence offered at hearing to show that that return, or the amount of tax shown due, was ever mailed to the Department.

2. On August 18, 2006, the Department issued an NOD to the Does, after determining that they were Illinois residents who were required to file an Illinois individual tax return, and that they did not file such a return for 2002. Department Ex. 1.
3. On the Statement portion of the NOD, the Department notified taxpayers that, based on information obtained from the Internal Revenue Service (IRS), the Department determined that: their adjusted gross income (AGI) for 2002 was \$103,272; their Illinois base income was \$111,160; their Illinois net income was \$103,160; and that they owed \$3,095 in Illinois income tax. Department Ex. 1, p. 3 (Computation of deficiency). Additionally, the Department proposed to assess a late filing or non-filing penalty in the amount of \$312 and a penalty for underpayment of estimated tax in the amount of \$348. *Id.*
4. During discovery, taxpayers produced documentary evidence to the Department, including W-2 forms and a form IL-4852 (Substitute for Unobtainable Form W-2), showing amounts of Illinois income tax that employers withheld from taxpayers' wages during 2002. Department Ex. 2 (copies of forms W-2 and IL-4852); Hearing Transcript (Tr.), pp. 5-8.
5. Taxpayers were not able to obtain all of their W-2 forms prior to hearing. *See* Department Ex. 2 (copy of form IL-4852); Tr. p. 10. Thus, they could not document

the total amount of Illinois income tax reported as being withheld on the return taxpayers caused to have prepared for 2002. Department Ex. 2; Tr. p. 10.

6. At hearing, the Department conceded that taxpayers had established that Illinois income tax had been withheld from their wages in the aggregate amount of \$2,164. Tr. p. 13; *see also* Department Ex. 2 (I round here, from the documented amount of \$2,164.10).
7. The Department also conceded that taxpayers were entitled to an Illinois property tax credit in the amount of \$211. Tr. p. 13.

Conclusions of Law:

Section 904 of the IITA provides:

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904(b). The *prima facie* correctness of the Department's determinations that taxpayers failed to file a 2002 Illinois income tax return, and that tax was due in the amount proposed, were established once the NOD was introduced into evidence at hearing, or otherwise made part of the record. *See* 35 ILCS 5/904; 5/914. Taxpayers offered no evidence to show that the Department's determination that they did not file an Illinois return for calendar year 2002 was incorrect. Thus, I conclude that the Department correctly determined that the Does failed to file an original IL-1040 for 2002.

The Department conceded, however, that the amount of tax proposed on the NOD was incorrect because it did not take into account certain amounts withheld from

taxpayers' wages, or the amount of a property tax credit due to taxpayers. Specifically, the Department conceded that the tax proposed should be reduced to take into account the \$2,164 that had been withheld from taxpayers' wages during 2002, and that taxpayers were entitled to an Illinois residential property tax credit in the amount of \$211. Department Ex. 2; Tr. p. 13. Finally, the Department conceded that the amounts of penalties proposed should be reduced to take into account the revised amount of tax remaining due. Tr. pp. 13-14.

I recommend that the Director uphold the Department's determination that taxpayers' Illinois net income for 2002 was \$103,160, and that the correct amount of Illinois income tax due on that base income was \$3,095. Department Ex. 1, p. 3. Based on the documentary evidence introduced at hearing and the Department's concessions, I recommend that the Director revise the amount of tax proposed by subtracting the sum of the tax withheld from taxpayers' wages (\$2,164) and the Illinois property tax credit due to taxpayers (\$211) from the tax due on taxpayers' base income. After taking into account those conceded payments and credit, the amount of tax remaining due is \$720. Department Exs. 1-2.

Taxpayers introduced no evidence to show that either penalty proposed should be abated based on reasonable cause. Thus, I recommend that the penalties proposed be assessed, but revised to take into account the correct amount of tax remaining due.

Conclusion:

I recommend the tax, penalties, and interest proposed in the NOD be revised as set forth in this recommendation. The NOD should then be finalized as revised, with interest to accrue pursuant to statute.

February 13, 2008
Date

John E. White, Administrative Law Judge